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SUBJECT: TRAINING CUSTOMS TO TAKE OVER EXPORT MONITORING SYSTEM RESPONSIBILITIES

11. Summary: The Taiwan Intellectual Property Office (TIPO) announced in early 2004 their desire to abolish the Export Management System (EMS) and transfer those responsibilities to the Department of Customs in an effort to shift funds to more urgent intellectual property protection priorities. TIPO and Department of Customs held a training session for Taipei area Customs managers on December 15, 2004 in preparation for the assumption of EMS responsibilities by Taiwan Customs. Taiwan plans to shift EMS's USD 1 million annual budget to support expansion of the Integrated Enforcement Task Force (IETF) and a cybercrime unit. Industry's reaction to both the abolishment of the EMS and to the training was mixed, with Business Software Alliance (BSA) representatives generally pleased but Entertainment Software Association (ESA) representatives still concerned that Taiwan Customs lack the experience and determination to prevent export of counterfeit computer hardware. End Summary.

12. Taiwan introduced the Export Monitoring System (EMS) in 1992 under U.S. pressure in an effort to prevent export of counterfeit software and hardware. The Institute for Information Industries (III) was tasked with establishing a Software Verification and Inspection Center (SVIC). Firms register their products with SVIC, which then conducts inspections on exported goods in an attempt to identify counterfeit products. Since 2001, SVIC has identified one case of a counterfeit product being exported. Given the absence of cases over the past three years, TIPO believes that the EMS USD 1 million budget can be put to better use in the protection of intellectual property and has proposed terminating the EMS program.

13. According to the TIPO proposal, the EMS program responsibilities would be transferred to the Taiwan Customs office. In order to prepare Customs to assume this additional responsibility, TIPO conducted training seminars for Customs managers in Kaohsiung, Taichung, and most recently at the Chiang Kai Shek Airport in Taoyuan in November and December. The Taoyuan seminar was attended by approximately 20 senior level Customs managers, as well as representatives from industry associations and AIT. TIPO Deputy Director General Jack Lu, SVIC's Pan Shih-ming, BSA's Gina Tsai, and Taiwan Customs Lin Ling-hui discussed the history of the EMS, methods of detecting counterfeit hardware and software, and procedures rightsholders can use to initiate inspections.

14. Following the presentations, participants went to the Taiwan Customs warehouse for a demonstration of Taiwan Customs new procedures for inspection of suspicious exports. Customs officials explained that exporting firms were classified into three categories. Those companies with established track records of export activity are exempt from regular inspection of documents and commodities - this comprises eighty five percent of shippers. Those with a less established track record are normally exempt from commodity inspection - these companies account for 10 percent of shippers. Finally, those companies that are not established shippers or have a history of violations are required to undergo both document and commodity inspection - these companies comprise about 5 percent of shippers. Taiwan Customs also employs a random check procedure that could target shipments from companies in any of these three categories.

15. Representatives from BSA and ESA had different opinions regarding the usefulness of the training. BSA agrees that the EMS budget could be better spent to fund other intellectual property protection activities. According to BSA, the changes in software manufacture and distribution since 1992 mean the EMS is no longer an effective mechanism for combating counterfeit software products. Nevertheless, BSA remains concerned that Taiwan Customs does not have the experience nor the determination to provide an effective deterrent to export of counterfeit goods. BSA is considering cooperating with the Motion Picture Association (MPA) to assign a representative from the industry associations to CKS Airport to encourage and assist Taiwan Customs to focus on counterfeit optical media exports. ESA shares these concerns, and further does not believe Taiwan Customs officials have been trained well enough to assume EMS's

duties, citing specifically the lack of operational level staff at the training session at CKS Airport. ESA did not participate as a speaker in the training sessions in November and December. ESA also believes transferring authority for inspection to Taiwan Customs may lead to less attention granted to entertainment software and hardware exports. The Taiwan ESA representative told AIT that Taiwan Customs is reluctant to adopt technology currently used by SVIC to test the authenticity of counterfeit hardware.

16. Comment: Taiwan has been actively promoting the dissolution of the EMS, most recently at Trade and Investment Framework Agreement discussions with USTR in Washington November 29 and 30. With only one case over the past three years, it appears the EMS, or at least its methodology, has outlived its usefulness. Plans to use the EMS budget to support expansion of the IETF and cybercrime operations are encouraging. But TIPO and Taiwan Customs need to do a better job of demonstrating to industry that continued concerns about counterfeit exports are not going to be ignored. TIPO and Taiwan Customs have announced plans to hold larger training sessions for operational level Customs staff beginning in January. Participation by ESA, BSA, MPA and other associations as trainers would be helpful in addressing some of the industry's legitimate concerns. End comment.

PAA